1   - VOLUME B -

2   IN THE UNITED STATES DISTRICT COURT

3   IN AND FOR THE DISTRICT OF DELAWARE

4   - - -

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   ROBERT BOSCH LLC,   :   CIVIL ACTION
6   :
                   Plaintiff,   :
7   :
        vs.   :
8   :
   PYLON MANUFACTURING   :
9   CORPORATION,   :
                                  :
10   Defendant.   :   NO. 08-542 (SLR)

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12
                                      Wilmington, Delaware
13   Thursday, April 15, 2010
                                      9:25 o'clock, a.m.
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15
   BEFORE: HONORABLE SUE L. ROBINSON, U.S.D.C.J., and a jury
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                                  - - -
17
   APPEARANCES:
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19   POTTER, ANDERSON & CORROON
                BY: RICHARD L. HORWITZ, ESQ.
20

21   -and-

22

23
                                      Valerie J. Gunning
24   Kevin Maurer
                                      Official Court Reporters
25

1   APPEARANCES (Continued):

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3   KENYON & KENYON, LLP
                     BY: JEFFREY S. GINSBERG, ESQ. and
4   MARK A. HANNEMANN, ESQ.
                          (New York, New York)

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6   Counsel for Plaintiff

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8   BAYARD, P.A.
                     BY: STEPHEN B. BRAUERMAN, ESQ.

9

10   -and-

11

12   FELDMAN GALE, P.A.
                     BY: GREGORY L. HILLYER, ESQ.,
13   JEFFREY FELDMAN, ESQ. and
                          JAVIER SOBRADO, ESQ.
                          (Bethesda, Maryland)

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15   Counsel for Defendant

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1   P R O C E E D I N G S

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3   (Proceedings commenced in the courtroom

4   beginning at 9:25 a.m.)

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6   THE COURT: All right. We made changes. We did

7   not make the stylistic changes you requested, but I believe

8   we made the important substantive changes that you requested

9   in the jury instructions. Go ahead and take a minute to

10   look those over, although at this point we've made copies

11   for the jury, so hopefully we're okay.

12   The only issues I want to discuss at this point

13   are issues that have to do with the opening statements. If

14   it does not have to do with the opening statements, we will

15   stop as soon as all the jurors show up. We've got one

16   juror. I don't want to hold them up for issues that don't

17   necessarily have to be addressed right away.

18   Yes, sir?

19   MR. HANNEMANN: Your Honor, Mark Hannemann for

20   plaintiff, Bosch.

21   Just one question on the edits to the

22   preliminary jury instructions.

23   The Court deleted, at Pylon's request, the

24   instruction that the Court had originally written that the

25   '947 patent had been found to be infringed. That's a

1   determination that's in the case and I think we need to tell

2   the jury that for context so that they understand why there

3   are three patents, but we're only talking about infringement

4   of two of them.

5   THE COURT: You can. I just chose not to.

6   MR. HANNEMANN: But I'm allowed to mention that?

7   That's all I wanted to clarify, your Honor.

8   And then there was one, I think, agreed issue.

9   The Court's order recently issued, Docket No. 290, talked

10   about allowing Swanepoel to testify and allowing theories on

11   derivation relating to the '905 patent and '434 patent as

12   well as the '947. I think that was text that came out of

13   our motion in limine that was filed before the summary

14   judgment. I think probably what the Court intended was just

15   to talk about the '947 patent there. That's agreed by both

16   side.

17   THE COURT: All right. Thank you.

18   MR. HANNEMANN: Thank you, your Honor.

19   THE COURT: All right. Any issues from counsel

20   for Pylon?

21   MR. HILLYER: Your Honor, just briefly

22   responding to Mr. Hannemann's point about mentioning the

23   infringement of the '947 patent.

24   We had submitted some authority in our footnote

25   to the Court which was pursuant to the motion in limine

 1   which was made in that case on the ground of unfair

 2   prejudice to preclude any mention of it, and we ask the

 3   Court to preclude them from getting into it, the lack of

 4   relevance, the extreme potential prejudice, informing the

 5   jury of the fact it's not an issue.

 6   THE COURT: Well, if there's not extreme

 7   prejudice, it seems to me as though a mention that

 8   infringement is not at issue for the '947 is fine. If you

 9   want me to mention it once to set the table, that's fine.

10   If you want me to do it, you're the one that suggested I

11   didn't do it. It has to be mentioned someplace.

12   MR. HILLYER: Just for purposes of being clear,

13   are you permitting them to say infringement of the '947 is

14   not an issue in this case?

15   THE COURT: That is what should be said as

16   opposed to -- well, I think that's what we've said in the

17   past.

18   MR. HILLYER: Okay. Thank you. That was my

19   point of clarification. Thank you.

20   MR. HORWITZ: Your Honor, I know this came up in

21   a slightly different context in our last trial, where the

22   parties had agreed that there was infringement. For the

23   jury to understand why they're being asked to discuss the

24   invalidity, they have to know that there has been some

25   determination whether it is among the parties or from the

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